Filed 8/21/19 In re S.E. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S.E. et al., Persons Coming Under the Juvenile Court Law. IMPERIAL COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. E.E. et al., Defendants and Respondents; S.E. et al., Appellants.	D075645 (Super. Ct. No. JJP000142 & JJ000144)

APPEAL from an order of the Superior Court of Imperial County, William D. Lehman, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Appellants.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Respondent E.E.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and Respondent A.L.

Henderson and Ranasinghe and Veronica A. Henderson, for Plaintiff and Respondent.

Minors S.E. and J.V. appeal an order at the 12-month review hearing in their Welfare and Institutions Code section 300[1] dependency proceedings returning them to the care of their mother, E.E. (Mother), with family maintenance services. They contend there is insufficient evidence to support the juvenile court's finding that there was no substantial risk of detriment to their safety, protection, or physical or emotional well-being if they were returned to Mother's care.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has three children: J.V., born in 2004; A.E., born in 2009; and S.E., born in 2017. After S.E.'s birth in December 2017, Mother tested positive for amphetamines, opiates, and benzodiazepines, and S.E. tested positive for amphetamines and opiates and suffered from withdrawal symptoms. Prior to S.E.'s birth, Mother had been living with friends for about one month and did not have a stable home. In late December, the Imperial County Department of Social Services (Department) filed a section 300 dependency petition alleging, inter alia, that J.V., A.E., and S.E. had suffered, or there was a substantial risk that they would suffer, serious physical harm or illness as a result of Mother's failure or inability to adequately supervise or protect them. In particular, the

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1 All statutory references are to the Welfare and Institutions Code.

petition alleged that Mother and S.E. tested positive for amphetamines and opiates. It also alleged that the children had been left without adequate provision for their support and the whereabouts of their parents were unknown.

At the children's detention hearing, the juvenile court found that Department had made a prima facie showing that the children came within section 300's provisions and removed them from their parents' custody. At the jurisdiction hearing, the court made true findings on the petition's allegations.

In its disposition report, Department stated that Mother, then 37 years old, had used methamphetamine since she was 23 years old. Mother stated that prior to Department's involvement in this case, she used methamphetamine once every three months. She also used clonazepam and, more recently, alprazolam, medications that were prescribed by her doctor. In January 2018, Mother tested positive for acetylmorphine, amphetamine, methamphetamine, codeine, hydromorphone, morphine, marijuana, heroin, hydrocodone, and oxycodone.

At the March 2018 disposition hearing, the court declared the children dependents of the court, removed them from Mother's custody, placed them in Department's care, and ordered them maintained at the maternal grandmother's home. The court also ordered reunification services for Mother.

In its six-month status review report, Department stated that Mother had completed KIVA's inpatient drug treatment program, which included drug testing and participation in groups and workshops on parenting, relapse prevention, life skills, and 12-step meetings. Mother also regularly visited with her children. She was currently

living with her boyfriend and his daughter. The children were doing well in the care of the maternal grandmother. At the September 2018 six-month review hearing, the court ordered Department to continue providing Mother with reunification services.

In an interim review report, Department requested that the court give it discretion to place the children with Mother. Department stated that Mother was participating in an outpatient drug treatment program and her drug tests were negative. She was cooperative with Department and regularly visited her children. J.V. and A.E. were doing well and stated they felt safe with Mother. They stated Mother was a "good mom," and they would be "fine" with living with Mother. J.V. stated Mother was not the "way she was before," explaining that she does not use drugs. At a December 2018 hearing, the court granted Department discretion to place the children with Mother.

In its 12-month status review report, Department recommended that the children be placed with Mother with family maintenance services. Mother continued to live with her boyfriend and his daughter. She continued to participate in an outpatient drug treatment program that included group and individual counseling. Mother continued to produce negative drug test results and had maintained seven months of sobriety. The children regularly visited Mother, including overnight weekend visits. Department's social worker observed Mother to be "attentive, caring and patient" with her children.

At the March 18, 2019 contested 12-month review hearing, J.V. testified that he would like to go with Mother on weekends and stay with the maternal grandmother during the week because Mother could not provide him with transportation to school.

He stated that for about the past five years he had stayed with the maternal grandmother Monday through Thursday and with Mother Friday through Sunday. When asked whether there was any reason other than transportation issues as to why he wanted to maintain the current arrangement, J.V. replied: "Not that I can think of." He confirmed that his main concern was that Mother could not take him to the places he needed to go (e.g., school) because she did not have a car. He added that he was also concerned Mother "might go back to her old ways," which he explained was a reference to her drug use. Nevertheless, when asked whether he felt like he or his sisters would be in danger if returned to Mother, J.V. replied, "No."

The maternal grandmother testified that she had been providing transportation for all of the children to school and appointments. Mother lived about four or five blocks away from her home. The maternal grandmother viewed S.E. as her own child. She opposed the return of the children to Mother full time because she did not feel they would be safe with Mother. She stated that even though Mother had negative drug tests recently, she always relapses.

In closing arguments, the children's counsel argued that J.V. and S.E. should not be returned to Mother's care and that the current sharing arrangement between Mother and the maternal grandmother should be continued. After hearing closing arguments, the court found that Mother had made "significant" progress toward alleviating or mitigating the causes that required the children's removal and that there was no longer any substantial risk of detriment to the children's physical or emotional well-being if they were returned to Mother's care. Accordingly, the court ordered that the children remain

dependents of the court in the custody of Department and that they be returned to Mother's care with family maintenance services. The court set an 18-month review hearing for September 9, 2019.

The children's counsel timely filed a notice of appeal challenging the March 18, 2019 order.

DISCUSSION

I

Juvenile Dependency Law Generally

"The purpose of the California dependency system is to protect children from harm and preserve families when safe for the child. (§ 300.2.) (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. (§§ 366.21, 366.22; [citation].)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424.)

Family reunification services are subject to strict time limitations. " '[T]o prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate. [Citations.] To avoid unnecessary delays in the process the Legislature has directed the juvenile court to 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' (§ 352, subd. (a).)' " (*In re Marilyn H.*

(1993) 5 Cal.4th 295, 308.) "Under the current dependency scheme, except in limited circumstances, a parent is entitled to 12 months of reunification services, with a possibility of 6 additional months, when a child is removed from a parent's custody. (§ 361.5.) The juvenile court must review the case once every six months. (§ 366.)" (*Ibid.*)

If reasonable services have been provided to the parent, section 366.21, subdivision (f)(1) requires the juvenile court at the 12-month review hearing to return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being.[2] (§ 366.21, subd. (f)(1); cf. *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*) [regarding § 366.22, subd. (a)].) It is Agency's burden to establish detriment. (§ 366.21, subd. (f)(1).) "The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have

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2 Section 366.21, subdivision (f)(1) provides: "The permanency hearing shall be held no later than 12 months after the date the child entered foster care . . . . At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. After considering the relevant and admissible evidence, the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." Section 366.21, subdivision (e)(1) sets forth similar provisions for the six-month review hearing.

hoped, or seems less capable than an available foster parent or other family member.' " (*Yvonne W.*, at p. 1400, quoting *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.) "Rather, the risk of detriment must be substantial, such that returning a child to parental custody represents some danger to the child's physical or emotional well-being." (*Yvonne W.*, at p. 1400.)

In evaluating detriment under section 366.21, subdivision (f) at the 12-month hearing or under section 366.22, subdivision (a) at the 18-month hearing, "the juvenile court must consider the extent to which the parent participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. [Citations.]" (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1400.)

We review a juvenile court's finding of a substantial risk of detriment for substantial evidence to support it. (*Sue E. v. Superior Court* (1997) 54 Cal.App.4th 399, 404 (*Sue E.*); *In re John V.* (1992) 5 Cal.App.4th 1201, 1212 (*John V.*).) "When an appellate court reviews a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.]" (*Id.* at p. 1212.) The appellant or petitioner who challenges the juvenile court's detriment finding has the burden to show that substantial evidence does not support the court's finding. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 (*L.Y.L.*).)

II

Substantial Evidence Supports Court's No-Detriment Finding

J.V. and S.E. contend there is insufficient evidence to support the juvenile court's finding at the 12-month review hearing that there was no substantial risk of detriment to their safety, protection, or physical or emotional well-being if they were returned to Mother's care. We disagree.

The record shows that at the time of the March 18, 2019 review hearing, Mother had been sober and drug-free since she entered the KIVA inpatient drug treatment program in June 2018, a period of about nine months. During that program, Mother participated in groups and workshops on parenting, relapse prevention, life skills, and 12-step meetings. After completing that inpatient program, she entered and continued to participate in an outpatient drug treatment program that included group and individual counseling. In addition, Mother regularly visited with the children and, according to Department, was "attentive, caring and patient" with her children. J.V. and A.E. told Department's social worker that they felt safe with Mother, she was a "good mom," and they would be "fine" with living with her. J.V. stated Mother was not the "way she was before," explaining that she does not use drugs. Based on that information, Department recommended in its 12-month status review report that the children be placed with Mother with family maintenance services.

At the contested 12-month review hearing, J.V. testified that for the past five years he had stayed with the maternal grandmother Monday through Thursday and with Mother Friday through Sunday. He did not know of any reason other than transportation why he

wanted to maintain that current living arrangement, although he expressed concern that Mother might relapse. Importantly, when asked whether he felt like he or his sisters would be in danger if returned to Mother, J.V. replied, "No."

We conclude the above evidence constitutes substantial evidence in support of the juvenile court's finding at the 12-month review hearing that there was no substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children if they were returned to Mother's care. (*Sue E.*, *supra*, 54 Cal.App.4th at p. 404; *John V.*, *supra*, 5 Cal.App.4th at p. 1212.) As stated above, when we review a sufficiency of the evidence challenge, "we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.]" (*John V.*, at p. 1212.) Assuming arguendo that another judge could have reasonably reached a contrary finding in the circumstances of this case, that is not our standard of review and we cannot substitute our deductions from the evidence for those made by the instant court. (*Ibid*.) Accordingly, we conclude there is substantial evidence to support the juvenile court's no-detriment finding and, based thereon, its order returning the children to Mother's care with family maintenance services.

To the extent S.E. and J.V. cite other evidence or inferences therefrom contrary to those made by the juvenile court, they misconstrue and/or misapply the substantial evidence standard of review. (*Sue E.*, *supra,* 54 Cal.App.4th at p. 404; *John V.*, *supra*,

5 Cal.App.4th at p. 1212.) In particular, they cite J.V.'s fear and anxiety that, despite Mother's nine-month sobriety, she might relapse in light of her 14-year history of substance abuse. They also cite S.E.'s close bond to the maternal grandmother and the emotional harm that might be caused by removing her from the grandmother. They also cite the maternal grandmother's testimony that despite Mother's recent sobriety, she (Mother) would relapse in the future as she has in the past. They also cite J.V. and the maternal grandmother's concern about transportation for the children if they were returned to Mother. Although the above evidence arguably could have supported a finding contrary to that made by the juvenile court, it does *not* show there is insufficient evidence to support the court's finding that there was no substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children if they were returned to Mother's care. In determining whether there is substantial evidence to support the court's finding, we can look only at whether there is any evidence, contradicted or uncontradicted, to support the court's finding and cannot substitute our deductions for those of the court. (*John V.*, *supra*, 5 Cal.App.4th at p. 1212.) Accordingly, S.E. and J.V. have not carried their burden on appeal to show there is insufficient evidence to support the court's no-detriment finding. (*L.Y.L.*, *supra*, 101 Cal.App.4th at p. 947.)

Furthermore, the cases cited by S.E. and J.V. in support of their argument are inapposite to this case and do not persuade us to reach a contrary conclusion. In particular, unlike the parents in *In re Amber M.* (2002) 103 Cal.App.4th 681 and *In re Cliffton B.* (2000) 81 Cal.App.4th 415, cited by S.E. and J.V., Mother completed her inpatient drug treatment program, continued to participate in an outpatient program, and

maintained her sobriety for nine months. Also, unlike Mother, the parent in *In re Kimberly F.* (1997) 56 Cal.App.4th 519, cited by S.E. and J.V., had been sober for only 120 days and the appellate court concluded in the circumstances of that case that the juvenile court erred by denying her section 388 modification petition for reinstatement of reunification services. (*Id*. at pp. 531, fn. 9, 535.) Therefore, none of the cases cited by S.E. and J.V. require us to reach a contrary result.

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.